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REPORT

OF THE

CRIMINAL JUSTICE REVIEW COMMITTEE

Executive Summary

February, 1999

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The Honourable Charles Harnick, Attorney General for Ontario

Dear Sirs:

The undersigned are pleased to present the *Report of the Criminal Justice Review Committee*. Over the past fifteen months we have developed a series of inter-related practical recommendations to increase the efficiency of the criminal courts. These recommendations endeavour to recognize the needs of the criminal justice system while protecting the rights of those involved in that system and addressing the obligations of those who are required to make the criminal justice system work. An essential prerequisite to implementing these proposals is the availability of adequate and predictable resources for the courts, the Ontario Legal Aid Plan and the prosecution services. These recommendations endeavour to reflect the various perspectives brought to the issues examined. Although, not surprisingly, some recommendations do not reflect the unanimous view of all committee members, the signatories support the overall direction and goal of this Report.

Mr. Justice Hugh Locke

Senior Judge John D. Evans

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The Criminal Justice Review Committee was established in October 1997 as a combined initiative of the judiciary, the Ontario Ministry of the Attorney General, and the Ontario Criminal Lawyers' Association. Its terms of reference were to undertake a focused review of the operation of the criminal courts in Ontario and make practical recommendations to increase efficiency, further reduce delay in bringing matters to trial, and shorten trials.

Committee Co-Chairs

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EXECUTIVE SUMMARY

The mandate of this Review is to examine the operation of the criminal courts in Ontario and make practical recommendations to increase efficiency and reduce delay without compromising fundamental principles of justice. Drawing on the varied experience, perspectives, and research of its committee members and support team, the advice of operational experts, and written submissions received from the judiciary, criminal justice stakeholders and the general public, the Review examined each stage of the criminal process looking for ways to improve the speed and efficiency of criminal proceedings, while respecting the rights of the accused, the expectations of victims, and the needs of society. The Review concluded that province-wide implementation of best practices developed during the "backlog blitz" initiative, an increase in and more effective deployment of resources, increased co-operation and co-ordination amongst the various participants in the criminal justice system, and the use of modern information technology will increase efficiency and reduce delay at each stage of the criminal process.

The remainder of this executive summary provides a brief synopsis of each chapter of the *Report of the Criminal Justice Review Committee* and a summary of its recommendations.

CHAPTER 1 INTRODUCTION

This Review amplifies the work of the Martin Committee in seeking ways to improve the speed and efficiency of criminal proceedings, while respecting the rights of the accused, the expectations of victims and the needs of society. To undertake its work, the Review committee met formally on eighteen occasions. It also extended an open invitation to all interested parties to make written submissions. Sixty-five submissions were received from the judiciary, criminal justice stakeholders, and the general public.

Delay continues to challenge the administration of criminal justice in Ontario. It can lead to criminal charges being stayed on constitutional grounds; it is unfair to those accused who want charges outstanding against them resolved as soon as possible; it causes further anxiety to victims; it disrupts the lives of witnesses and jurors; it increases the cost of the criminal justice system to the taxpayer; and it undermines the pursuit of justice itself, as memories fade and witnesses disappear. The major strategies recommended by this Review to combat delay include: province-wide implementation of best practices developed during the "backlog blitz" initiative; more effective deployment of increased resources where there is a demonstrated need, increased co-operation and co-ordination amongst the various parts of the criminal justice system; and the use of modern information technology.

CHAPTER 2 BAIL

The decision whether or not to release an accused person pending trial is one of the most important decisions made during the course of criminal proceedings. Erroneous decisions can have tragic consequences. While it is important that efforts be made to improve the efficiency of bail courts, efficiency must not be achieved at the cost of public safety or fairness to the individual.

The police should detain only those individuals who pose a danger to society, are a flight risk, or whom the police have no authority to release. There appears to be considerable variation across the province with respect to the number of suspects released by the police prior to trial. The issue of pre-trial release warrants further detailed study.

A problem requiring immediate attention is that approximately one third of all detained persons seeking pre-trial release appear three or more times in bail court before a ruling is made. This appears to be largely a function of overcrowded court dockets. Additional resources are urgently needed to address this problem. Articling students or non-lawyers should be available to assist duty counsel to prepare for bail hearings. At least two duty counsel and two Crown counsel should be assigned to each bail court in busy court locations. These counsel should be assigned to bail court for intervals of at least one full week's duration.

CHAPTER 3 CROWN CHARGE SCREENING

The implementation of a Crown charge screening system has significantly improved the administration of criminal justice in Ontario. Early review of the police brief by an experienced prosecutor identifies areas requiring further police investigation or deficiencies in the evidence gathered by the police. Weak cases that once went to trial are now being screened out at an early stage in the proceedings.

It appears that appropriate and adequate professional and support resources are not always allocated to charge screening. This important function should be performed by experienced prosecutors, who must have sufficient time to conduct a proper charge screening review. Crown counsel frequently have to spend time collecting and organizing file information. While actual charge screening must always be performed by counsel, file administration work is more efficiently performed by non-lawyers.

The Ontario Ministry of the Attorney General and the Department of Justice (Canada) should foster work environments where prosecutors feel free to fearlessly exercise discretion on a principled basis, without concern for personal or professional repercussions. Prosecutors should expect neither to be exempt from public scrutiny nor shielded from public accountability. They must expect on occasion to be called upon to explain controversial decisions. They are also entitled to expect support from their superiors if they exercise their discretion on a principled basis.

CHAPTER 4 LEGAL AID

In order for the criminal justice system to function more efficiently, it is imperative that the number of unproductive court appearances be reduced. If this is to be achieved, the legal aid application and approval process must be expedited. It is not uncommon for cases to be adjourned several times for reasons related to legal aid. Recommended strategies to address this problem include: providing a brochure to every accused explaining the legal aid application process; empowering intake officers to summarily refuse coverage; and increasing the availability of duty counsel to assist accused during the initial stages of the criminal process. It is also recommended that the Ontario Legal Aid Plan make increased use of case management and issue discretionary and task-specific certificates.

CHAPTER 5 CROWN DISCLOSURE

Crown disclosure is not only a crucial component of an accused's right to make full answer and defence, it is also vital to the efficient functioning of the criminal justice system. To ensure that efficient disclosure practices are instituted and maintained across the province, police and prosecution co-operation and co-ordination must improve. A provincial co-ordinating committee should be established to develop a directive that comprehensively sets out the disclosure responsibilities of the police and prosecutors, and to address disclosure issues on an on-going basis. It is also urgent that a new and effective Memorandum of Understanding (MOU) be negotiated between police representatives and the Ministry of the Attorney General to govern the production, quality and format of police and disclosure briefs. Comprehensive policies must also be developed concerning the disclosure of audio and video taped evidence and the transcription of witness statements.

CHAPTER 6 RESOLUTION DISCUSSIONS

Resolution discussions are an essential part of the criminal justice system. When properly conducted, they benefit not only the accused, but also victims, witnesses, and the administration of justice generally. The provincial *Crown Policy Manual* should include guidelines governing the conduct of resolution discussions with unrepresented accused. To ensure that unrepresented accused appreciate the nature and consequences of a guilty plea, trial judges should conduct plea comprehension inquiries.

Numerous early resolution best practices were developed during the "backlog blitz" initiative. Both Crown and defence counsel should make every reasonable effort to expedite the fair resolution of cases. Certainty of outcome facilitates resolution discussions and agreements. Counsel will only enter into resolution agreements if they are reasonably sure that their joint submission will be accepted. Consequently, sentencing judges should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.

CHAPTER 7 JUDICIAL PRE-HEARING CONFERENCES

Judicial pre-hearing conferences maximise the use of judicial and other resources by resolving and / or narrowing the issues which must be litigated, and facilitating resolutions where appropriate. The Review identifies a number of judicial pre-hearing conference practices that have proven successful. For example, no conference should take place until a resolution meeting has been held between counsel. A judicial pre-hearing conference should be held in every case where it is anticipated that a matter will involve a half-day or more of court time, or where it is requested by either the Crown or defence.

CHAPTER 8 CRIMINAL COURT CASEFLOW MANAGEMENT

Courts with speedy case resolution times are generally ones in which the police, prosecutors, and the judiciary have a strong commitment to speedy case processing and have worked co-operatively to develop and maintain effective caseflow management procedures. Caseflow management refers to the process whereby the movement of cases through the criminal justice system is monitored and

controlled to ensure maximum efficiency. It is strictly an administrative process, but it enhances the quality of the justice system by ensuring that cases are heard within a reasonable time, complex cases receive greater judicial attention, and counsel are prepared for each court appearance.

Successful caseflow management systems encourage all participants in the criminal justice process, including the accused, to discharge their responsibilities as soon as possible. They facilitate plea negotiations between the Crown and defence counsel and encourage early guilty pleas, provide reliable and predictable trial date scheduling, establish appropriate caseflow management goals and guidelines, and monitor system performance. The Review proposes efficacious and realistic caseflow management goals and guidelines for Ontario.

CHAPTER 9 TRIAL PROCEDURE, EVIDENCE AND PRELIMINARY INQUIRIES

Trials in Ontario have become longer and more complex in recent years. The Review makes a number of recommendations to help reduce the time and resources required for preliminary inquiries and trials. For example, greater use should be made of admissions of fact and affidavit evidence in criminal courts. The rules of the Ontario Court of Justice should be amended to allow the parties to bring uncontested motions and applications in writing and to recognize the common law authority of trial judges to place time limits on oral argument and require submissions to be made in writing. Consideration should also be given to the use of "discovery" preliminary inquiries in appropriate cases.

CHAPTER 10 ALTERNATIVE MEASURES

Alternative measures programs not only enhance the efficiency of the criminal courts by ensuring that judicial resources are available to deal with serious offences, they may also improve the quality of the justice system. In less serious cases, an offender's criminal behaviour can be more rapidly and effectively addressed through a program of alternative measures than through traditional judicial proceedings. There is some evidence to suggest that alternative measures programs are effective in reducing recidivism. In addition, because alternative measures programs encourage restitution, reconciliation, and complainant participation in the justice process, victims report a high level of satisfaction with most alternative measures initiatives.

Ontario has formally designated alternative measures programs for young offenders and mentally disordered offenders, but has not formally designated a program of alternative measures for adults. However, unofficial local programs, as well as a small number of formal pilot projects, are in operation throughout the province. The Review recommends that Ontario establish a co-ordinated, generally available, and monitored adult alternative measures policy.

CHAPTER 11 CO-OPERATION AND CO-ORDINATION

For sound constitutional reasons, each part of the criminal justice system must retain its own identity and independence. It is of crucial importance, however, that the major participants recognize the interdependence of the system. Greater systemic efficiency could be achieved by creating a provincial and local criminal justice co-ordinating committees to serve as forums in which the

judiciary and criminal justice stakeholders can consult and communicate with one another and identify and solve systemic problems. The Review also recommends greater co-operation between the Attorney General of Ontario and the Department of Justice (Canada) in the effective deployment of prosecutorial resources, continued consideration of a Court Services Agency, the creation of specialized courts where it can be shown that they are likely to improve the quality of justice, or result in cost savings without compromising the quality of justice, and greater communication and consultation between the criminal justice system and the broader community.

SUMMARY OF RECOMMENDATIONS

The Criminal Justice Review Committee makes the following recommendations:

CHAPTER ONE: INTRODUCTION

1.1 Adequate and predictable resources be provided to the courts, the Ontario Legal Aid Plan, and the prosecution services.

1.2 The Integrated Justice Project develop a system which is capable, amongst other things, of generating reliable statistical information regarding the operation of the criminal courts in the province.

1.3 The proposed provincial criminal justice co-ordinating committee and the proposed local criminal justice co-ordinating committees consider ways of improving the dignity of court proceedings.

CHAPTER TWO: BAIL

2.1 The Ontario Ministry of the Solicitor General and Correctional Services examine the exercise of police pre-trial release powers across the province, to determine whether greater use could be made of the release powers conferred on the police by the *Criminal Code*.

2.2 The Ontario Ministry of the Solicitor General and Correctional Services report the results of the above study to the proposed provincial criminal justice co-ordinating committee for whatever further action that committee considers appropriate.

2.3 The proposed local criminal justice co-ordinating committees review the operation of local bail courts and implement whatever measures are required to expedite the appearance of all detained persons for a bail hearing as soon as possible.

2.4 The Ministry of the Attorney General and the Chief Judge of the Ontario Court (Provincial Division) consider establishing additional bail courts in busy jurisdictions.

2.5 Duty counsel continue to assist unrepresented accused at bail hearings.

2.6 In busy court locations, in accordance with the recommendations of the *Cole / Gittens Report*, articling students or non-lawyers should be available to assist duty counsel to prepare for bail hearings.

2.7 At least two duty counsel be assigned to each bail court in busy court locations.

2.8 At least two Crown Attorneys be assigned to each bail court in busy court locations. One Crown could call the list while the other meets with defence counsel, complainant / victims, or police in an adjacent area. Where feasible, Crown counsel should be available to meet with defence counsel prior to the commencement of court.

2.9 Whenever possible, Crown counsel be assigned to bail court for intervals of at least one full week's duration.

2.10 Adequate court staff be assigned to busy bail courts to ensure that efficient and streamlined processing occurs.

2.11 The proposed local criminal justice co-ordinating committees meet regularly to discuss prisoner transportation and bail court problems and procedures.

2.12 Bail courts be provided with computers equipped with suitable word processing programs and templates to assist court staff in preparing bail orders and related documents. Court staff should be given such training in the use of this equipment as they may require.

2.13 The government of Ontario continue to fund bail supervision or equivalent programs.

CHAPTER THREE: CROWN CHARGE SCREENING

3.1 The Ontario Ministry of the Attorney General and the Department of Justice (Canada) allocate appropriate and sufficient professional and support staff resources to the charge screening function so that experienced Crown counsel have the time required to conduct proper charge screening reviews.

3.2 The Ontario Ministry of the Attorney General and the Department of Justice (Canada) examine ways to foster work environments where prosecutors feel free to fearlessly exercise discretion on a principled basis, without concern for personal or professional repercussions.

3.3 An adequate number of duty counsel be available to assist unrepresented accused in ascertaining the Crown's tentative position on sentence and to provide basic legal advice to unrepresented accused on the consequences of entering a guilty plea.

CHAPTER FOUR: LEGAL AID

4.1 The police provide to all accused persons, at the time of arrest or the issuing of an appearance notice, summons, or other form of statutory release, an informational brochure prepared by the Ontario Legal Aid Plan.

4.2 If the efficiency of the legal aid approval process is to be improved, more must be done to discourage unrealistic applications.

4.3 The Ontario Legal Aid Plan be empowered to issue discretionary certificates in situations where, notwithstanding the fact that there is little or no risk of incarceration, the consequences of a criminal conviction on the accused would likely be so severe that, in the interests of justice, coverage should be provided.

4.4 An adequate number of duty counsel be available in each court location to assist accused persons during the crucial pre-trial stages of the criminal justice process.

4.5 All accused persons who have not retained private counsel should be permitted to consult with duty counsel during bail, set date, or intake court proceedings, regardless of the accused's financial circumstances.

4.6 Duty counsel services be provided by lawyers experienced and knowledgeable in the criminal law.

4.7 Efforts be made to ensure continuity of duty counsel in each court location.

4.8 The use of case management by the Ontario Legal Aid Plan and its extension to preliminary inquiries, cases involving smaller projected billings, and cases involving multiple accused.

4.9 The Ontario Legal Aid Plan study the feasibility of issuing task-specific certificates.

CHAPTER FIVE: CROWN DISCLOSURE

5.1 Full and timely Crown disclosure is an essential component of an efficient criminal justice system. In order to ensure that efficient disclosure practices are instituted and maintained across the province, the Criminal Justice Review Committee recommends that the Attorney General and Solicitor General of Ontario, in co-ordination with federal policing and prosecution authorities, establish a permanent disclosure co-ordinating committee.

5.2 It is urgent that a new and effective Memorandum of Understanding be negotiated between police representatives and the Ministry of the Attorney General as soon as possible.

5.3 The proposed Attorney General and Solicitor General's co-ordinating committee on Crown disclosure report on a regular basis to the proposed provincial criminal justice co-ordinating committee.

5.4 In the absence of exceptional circumstances, disclosure should be provided to an accused at his or her first court appearance.

5.5 Two copies of the disclosure materials should be prepared by the police at the outset – one for the Crown and one for the defence. In cases involving multiple accused, the police should prepare one copy of the disclosure materials for each accused.

5.6 Every police force in the province should be required to designate an appropriate number of disclosure officers, who will be responsible for reviewing all police briefs to determine whether the briefs: (a) are complete; and (b) comply with quality control standards.

5.7 Only briefs which are approved by a disclosure officer should be forwarded to the Crown. All other briefs should be remitted back to the investigating officer with an indication of what improvements / additional materials are required.

5.8 Disclosure officers should be of high rank and should be empowered to take appropriate action when officers fail to make full and timely disclosure to the Crown or to respond to Crown requests for additional materials or investigative work in a prompt and courteous manner.

5.9 Uniform quality control standards be implemented across the province. At a minimum, those standards should stipulate that all police briefs must:

(a) be paginated;
(b) include an index; and
(c) contain a meaningful synopsis of the case. The synopsis should include a list of police and civilian witnesses and a summary of each witness's anticipated evidence which clearly articulates the significance of that evidence.

5.10 Checklists should be used to monitor the timing and content of disclosure. All disclosure should be dated and the brief flagged so that the Crown is aware when additional disclosure has been added to the brief after the accused's first court appearance.

5.11 The accused is entitled without fee to basic disclosure as defined in the *Martin Committee Report*.

5.12 Each accused is entitled to one copy of the basic disclosure materials. Accordingly, where an accused requests an additional copy or copies (*e.g.,* because the original materials have been lost), then the accused may be charged a reasonable fee for this service.

5.13 That basic and in service training programs continue to stress the importance of effective and efficient witness interviews and how audio and video taping can enhance rather than hinder the statement taking process.

5.14 The proposed Crown disclosure co-ordinating committee develop, on a priority basis, a comprehensive, province-wide policy on the disclosure of audio and video taped evidence for consideration and implementation by the proposed provincial criminal justice co-ordinating committee.

5.15 In the absence of a comprehensive, province-wide policy, the issue of whether the Crown will be required to produce a transcript of a recorded statement, or portions thereof, should be resolved by agreement between counsel, or, at the latest, at a judicial pre-trial conference.

5.16 The proposed permanent disclosure co-ordinating committee should develop a comprehensive, province-wide policy on the transcription of witness statements for consideration by the proposed provincial criminal justice co-ordinating committee.

CHAPTER SIX: RESOLUTION DISCUSSIONS

6.1 Policy R-1 of the provincial *Crown Policy Manual* be amended to include guidelines, similar to those contained in the plea and sentence negotiation chapter of the federal prosecutor's manual, governing the conduct of resolution discussions with unrepresented accused.

6.2 In accordance with recommendation 55 of the *Martin Committee Report*, trial judges conduct succinct, plain language plea comprehension inquiries in all guilty plea cases.

6.3 In accordance with recommendation 56 of the *Martin Committee Report*, that the *Criminal Code* be amended to require a sentencing judge to conduct a plea comprehension inquiry in all cases, regardless of whether the accused is represented by counsel.

6.4 The Ministry of the Attorney General continue to support the Investment Strategy initiative.

6.5 Crown briefs be stored in, or in close proximity to, the Crown Attorney's office.

6.6 Local trial co-ordinators, in cooperation with the Crown Attorney and the judiciary, endeavour to ensure that individuals who wish to enter a plea of guilty can do so without delay.

6.7 Crown counsel emphasize in sentencing submissions the principle that, absent exceptional circumstances, there should be less mitigation for a guilty plea entered on the day of trial than for a guilty plea entered in advance of trial.

6.8 The Ministry of the Attorney General and the Department of Justice (Canada) circulate to Crown counsel a list of early resolution "best practices".

6.9 The Law Society of Upper Canada amend Rule 10 of its *Professional Conduct Handbook* to impose a professional duty on lawyers, when acting as advocates, to make every reasonable effort consistent with the legitimate interests of the client to expedite litigation.

6.10 The Criminal Justice Review Committee endorses recommendation 58 of the *Martin Committee Report* which provides that a sentencing judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.

CHAPTER SEVEN: JUDICIAL PRE-HEARING CONFERENCES

7.1 The Criminal Justice Review Committee recognizes that there is no single system for the scheduling and conducting of pre-hearing conferences which is suited to all court locations in the province. To date, each location has developed its own system for conducting judicial pre-hearing conferences and it is desirable that each location continue to experiment with, and refine, its own system to suit local conditions.

7.2 A Commentary to Rule 10 of the *Professional Conduct Handbook* be added concerning the role of defence counsel at a judicial pre-hearing conference.

7.3 The proposed local criminal justice co-ordinating committees consider adopting the following "best practices":

(a) No judicial pre-hearing conference should be held until a conference (either by telephone or in person) has been held between counsel. Telephone counsel conference meetings should be encouraged wherever possible, bearing in mind that it is never acceptable for a secretary or other support staff to telephone in the place of counsel.

(b) No judicial pre-hearing conference should be held until the Crown has made initial disclosure.

(c) Where possible, judicial pre-hearing conferences should be scheduled on a remand date. This will ensure that, if necessary, defence counsel is able to confer with his or her client without delay.

(d) A duty court or judge should be made available whenever judicial pre-hearing conferences are scheduled.

(e) At the request of either Crown or defence counsel, the investigating officer should attend the judicial pre-hearing conference.

(f) Where defence counsel feel it is desirable for the investigating officer to attend judicial pre-hearing conferences, or be available to answer questions, he or she should communicate that to the Crown at the counsel pre-trial.

(g) Where defence counsel is going to present information or evidence to Crown counsel for the Crown's consideration, and it can be reasonably anticipated that the Crown will be required to make additional inquiries as a result of that information, defence counsel should do so at the counsel pre-trial so that the judicial pre-trial need not be adjourned.

7.4 A judicial pre-hearing conference be mandatory where it is anticipated that a matter will involve a half-day or more of court time.

7.5 To the extent that the recommendations of the Martin Committee with regard to judicial pre-hearing conferences have not been implemented, the Criminal Justice Review Committee recommends that the Attorney General of Ontario take immediate steps to implement the recommendations. Specifically, Crown counsel attending at a judicial pre-hearing conference must be experienced and must have full authority to deal conclusively with issue resolution and guilty pleas.

7.6 Defence counsel attending at a judicial pre-hearing conference should attend with complete instructions and have authority to deal conclusively with the matter.

7.7 At a minimum, the following issues should be addressed at every pre-trial conference:

(a) whether counsel wish to raise any issues with respect to disclosure;

(b) whether the continuity of the physical or documentary evidence can be waived, waived except for certain specific exhibits or documents, or dealt with by way of affidavit evidence;

(c) whether, in a document-intensive case, affidavits pursuant to ss. 29 and 30 of the *Canada Evidence Act* with regard to business records or records of financial institutions can be waived;

(d) whether there are witnesses who can be waived or whose evidence can be agreed to;

(e) where a preliminary inquiry is to be held, whether an out of court discovery is appropriate for any or all witnesses; and

(f) whether written submissions on legal or evidentiary issues can be provided to the presiding judge, rather than oral argument.

7.8 The Criminal Justice Review Committee recognizes that the judiciary in Ontario is highly qualified and able, but that not every judge may be suited to or interested in conducting judicial pre-hearing conferences. Administrative judges should give careful consideration to the selection of judges conducting pre-hearing conferences. Judges conducting pre-hearing conferences should be experienced in criminal law, knowledgeable with regard to the range of penalty for offences, and able to facilitate the resolution of issues.

CHAPTER EIGHT: CRIMINAL COURT CASEFLOW MANAGEMENT

8.1 The proposed provincial criminal justice co-ordinating committee be responsible for ensuring that effective caseflow management systems are established throughout the province.

8.2 There is no single caseflow management system which is suited to all jurisdictions in the province. Caseflow management systems should be developed locally to accommodate local needs and conditions. While final responsibility for the operation of the system lies with the courts, all justice partners must be active participants in the development and evaluation of the system.

8.3 Judicial commitment and leadership are critical components of an effective caseflow which will govern proceedings and must be diligent in enforcing compliance with those deadlines.

8.4 Unless special circumstances exist, within four weeks of charges being laid, the police should provide the Crown with two copies of a high quality Crown brief. In prosecutions involving more than one accused, the police should provide the Crown with one copy of the brief for each accused, plus one copy for the Crown.

8.5 Prior to the accused's first appearance, an experienced Crown counsel should review the brief and determine what materials should be disclosed. Crown counsel should also screen the charges.

8.6 The first appearance should be scheduled so as to allow adequate time for: the accused to apply for legal aid or retain private counsel; the police to provide the Crown with two copies of a high quality brief; and the Crown to screen the charges.

8.7 Where local conditions allow, appearances in intake court should be staggered so as to prevent courtroom overcrowding and to ensure that accused persons do not have to spend hours in court, waiting for their cases to be called.

8.8 At the time of the accused's first appearance, the Crown should:

- withdraw any charges which fail to satisfy the reasonable prospect of conviction / public interest test set out in the *Martin Committee Report* and the *Crown Policy Manual;*
- where appropriate, refer the accused to a program of alternative measures;
- in the case of a hybrid offence, providing that the police investigation has been completed, indicate whether the Crown will be proceeding summarily or by indictment; and
- provide a copy of the disclosure package to the accused or his or her counsel. Accused persons should be advised that if the disclosure materials are lost or stolen, there will be a charge for replacement copies.

8.9 Efficiency is enhanced if two Crown counsel and two duty counsel are assigned to each intake court. While one Crown and one duty counsel deal with matters in court, the other two can conduct resolution discussions outside of court.

8.10 If the accused is unrepresented but has a *bona fide* excuse for his or her failure to obtain legal representation, then the second appearance should be scheduled approximately four to six weeks from the date of the first appearance so as to afford the accused additional time to apply for legal aid or retain private counsel. Otherwise, the adjournment between the first and second appearances should be brief.

8.11 Accused persons who intend to be represented should appear with counsel at their second appearance and counsel should "get on the record". If they have not already done so, the Crown and defence should meet to discuss the possibility of a plea or to narrow the issues. That meeting should be conducted prior to the accused's third appearance.

8.12 At the outset of the accused's third court appearance, the accused should be asked to enter a plea and, where applicable, to make an election as to the mode of trial. Depending upon that election, a date should then be set for either a judicial pre-trial, preliminary inquiry, or trial.

8.13 The Integrated Justice Project should endeavour to develop a system which is capable of tracking the progress of cases through the criminal justice system and generating information regarding:

- total time to case disposition for each major case classification;
- elapsed time between major case events; and
- number of appearances, pretrial resolution rates, trial rates and annual disposition rates.

8.14 The federal government give priority to the development and enactment of an "out of court" intake procedure for the criminal courts.

8.15 In the absence of *Criminal Code* amendments implementing an effective "out of court" intake model, the province continue developing and evaluating video remand capability.

CHAPTER NINE:
TRIAL PROCEDURE, EVIDENCE, AND PRELIMINARY INQUIRIES

9.1 The model pre-trial conference forms prompt the parties and the trial judge to consider whether the continuity of physical evidence is in issue.

9.2 The *Criminal Code* be amended to provide for the use of affidavit evidence to prove the continuity of physical exhibits. Cross-examination of the affiants should only be permitted with leave of the trial or preliminary inquiry judge.

9.3 In the absence of a *Criminal Code* amendment, rules of court be drafted for both the General and Provincial Divisions which would provide for the use of affidavit evidence to prove the continuity of physical exhibits.

9.4 The model pre-trial conference form prompt the parties and the trial judge to consider whether the evidence of non-contentious witnesses can be submitted by way of agreed statement of fact or affidavit.

9.5 The *Criminal Code* be amended to provide for the use of affidavit evidence to prove the time, date, and place of interception of private communications. Cross-examination of the affiants should be prohibited, except where leave of the trial or preliminary inquiry judge is obtained.

9.6 The *Criminal Code* be amended to provide for the use of affidavit evidence to prove the time, date, and place of reception of "911" calls. Cross-examination of the affiants should be prohibited, except where leave of the trial or preliminary inquiry judge is obtained.

9.7 In the absence of a *Criminal Code* amendment, Provincial and General Division rules be drafted which would allow for the reception of affidavit evidence proving the time, date, and place of intercepted private communications and "911" calls. The rules should stipulate that cross-examination of the affiants is prohibited, except where leave of the trial or preliminary inquiry judge is obtained.

9.8 The *Criminal Code* be amended to impose a positive obligation on defence counsel to disclose, in advance of the trial date, the *curriculum vitae* and anticipated evidence of any expert witnesses they intend to call.

9.9 The model Provincial Division and General Division pre-trial forms prompt the parties to consider whether there will be defence experts, and ask defence counsel whether disclosure has been made. The forms should indicate that where defence fails to make disclosure, an adjournment will be granted to the Crown, if requested.

9.10 The proposed Ontario Attorney General and Solicitor General's co-ordinating committee on Crown disclosure consider the issue of how the proposed defence disclosure requirement can be implemented without unfairly prejudicing the accused.

9.11 The rules of the Ontario Court of Justice (Provincial and General Divisions) be amended to allow the parties to a criminal proceeding to bring uncontested motions and applications in writing.

9.12 The common law authority of trial judges of the Ontario Court of Justice (Provincial and General Divisions) to place time limits on oral argument and / or require submissions to be made in writing be embodied in a rule of court. The rule should be strictly permissive.

9.13 Counsel consider conducting out-of-court discoveries, and waiving the preliminary inquiry, in appropriate cases.

9.14 The model Provincial Division pre-trial form prompt the parties and the judge at a judicial pre-hearing conference to consider whether an out-of-court discovery might be appropriate.

9.15 A Provincial Division rule and a protocol for the conduct of "discovery" preliminary inquiries be drafted to regulate the conduct of discoveries.

CHAPTER TEN: ALTERNATIVE MEASURES

10.1 Providing the informed and free consent of both the offender and victim is obtained, mediation and sentencing circles may be an appropriate means of addressing criminal behaviour in some cases.

10.2 The provincial *Crown Policy Manual* should be amended to include formal policies governing the use of alternative measures.

10.3 Alternative measures programs have great potential to enhance both the efficiency and quality of the criminal justice process and should, accordingly, be encouraged.

10.4 The government of Ontario should establish an adult diversion policy in order to minimize the appearance of unfairness which may result where:

- some parts of the province decide to establish diversion programs and others do not; or
- different eligibility criteria apply across the province.

10.5 The adult diversion policy should not mandate a single program model but should instead encourage local experimentation and community involvement.

10.6 The provincial *Crown Policy Manual* should be amended to require Crown counsel to consider alternatives to prosecution where available.

10.7 Community representatives should be invited to participate in the program design process. Community involvement is critical if the public is to be persuaded that alternative measures are not "soft on crime" and do not inappropriately "widen the net" of the criminal justice system.

10.8 New policies and programs, including alternative measures initiatives, must be carefully planned and properly resourced. Before a project is approved, an agreement should be reached as to when an evaluation will take place and how the project's success is to be measured.

10.9 Pre-charge diversion, including the use of official warnings, should continue to be carefully studied by the Ontario Ministry of the Solicitor General and Correctional Services.

10.10 The government of Ontario should establish a central registry of information on alternative measures programs in the province, and / or a "best practices" manual, which will assist local stakeholders in determining which programs are effective and how they might be adapted to suit local needs and conditions. Independent evaluations of existing programs should be commissioned in order to identify best practices.

CHAPTER ELEVEN: CO-OPERATION AND CO-ORDINATION

11.1 The Joint Heads of Court and Attorney General Committee should establish a permanent provincial criminal justice co-ordinating committee ("PCJCC") composed of representatives of key participants in the criminal justice system.

11.2 The participants in the PCJCC be the following:

(a) the Chief Justice of the Ontario Court (General Division);
(b) the Chief Judge of the Ontario Court (Provincial Division);
(c) the Ministry of the Attorney General;
(d) the Ministry of the Solicitor General, including representatives of the OPP, RCMP and municipal police forces;
(e) the Department of Justice (Canada);
(f) the Ontario Criminal Lawyers' Association;
(g) the Ontario Crown Attorneys' Association
(h) the Ontario Legal Aid Plan;
(i) Probation and Parole Services, and the Correctional Service of Canada;
(j) the Victim-Witness Assistance Program; and
(k) such other participants as the PCJCC sees fit, including *ad hoc* participants.

11.3 The representatives of each participant in the PCJCC be senior persons with authority to discuss and resolve issues on behalf of their institutions.

11.4 The PCJCC meet on a regular basis and report to the Joint Heads of Court and Attorney General Committee as required.

11.5 Each court location establish a local criminal justice co-ordinating committee ("LCJCC") chaired by the judiciary and composed of representatives of key participants in the criminal justice system at the local level.

11.6 The participants in each LCJCC be the following persons, or their representative:

(a) the local administrative justice of the Ontario Court (General Division);
(b) the local administrative judge of the Ontario Court (Provincial Division);
(c) the local administrative Justice of the Peace;
(d) the local Crown Attorney;
(e) a senior representative from each policing service that uses court facilities in the area, as well as the Superintendent (or his or her designate) of each local jail;
(f) the local agent of the Department of Justice (Canada) if there is no permanent federal Crown office;
(g) a representative from either the Criminal Lawyers' Association or the county / district law association;
(h) the local manager of court operations;
(i) the local office of the Ontario Legal Aid Plan;
(j) the local office of Probation and Parole Services, and possibly the Correctional Service of Canada;
(k) the Victim-Witness Assistance Program; and
(l) such other participants as the LCJCC sees fit, including *ad hoc* public participants.

11.7 If a representative attends of behalf of an official, (*e.g.:* an officer attends on behalf of the Chief of Police) then the representative should be a senior official with decision-making authority.

11.8 Each LCJCC meet on a regular basis.

11.9 The Department of Justice (Canada) and the Ontario Ministry of the Attorney General negotiate a protocol to govern the delegation of charges between their agents where persons are charged with offences contrary to the *Criminal Code* and offences contrary to other federal criminal legislation, and those charges arise out of the same criminal transactions or related criminal transactions.

11.10 The basic principles of the protocol be as follows:

(a) the jurisdiction which prosecutes the more serious charge should assume carriage of the less serious charge;
(b) where both charges are equally serious, but one offence is committed in order to facilitate the commission of the other, then the facilitating charge should be delegated;

(c) where a *Criminal Code* charge is laid relating to a breach of a probation or bail order, or a failure to appear in court, that arises from a non-*Criminal Code* charge, that charge should continue to be prosecuted by agents of the Attorney General of Ontario;
(d) where there is no obvious delegation, then the issue should be left to the discretion of the local agent of the respective Attorneys General; and
(e) the local agents of the respective Attorneys General should retain discretion to accept or reject individual delegations.

11.11 The Ministry of the Attorney General and the Department of Justice (Canada) consider assigning prosecutors jointly to very serious cases where the alleged criminal behaviour results in both *Criminal Code* and *non-Criminal Code* charges.

11.12 Specialized courts be considered where it can be shown that they are likely to either:

(a) improve the quality of justice; or
(b) result in cost savings without compromising the quality of justice.

11.13 Participants in the criminal justice system consult broadly, on an ongoing basis, with other stakeholders in the system. This consultation could take place within the context of the provincial criminal justice co-ordinating committee, or the local criminal justice co-ordinating committees.

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